



**CITY OF SAN DIEGO
COUNCILMEMBER SHERRI S. LIGHTNER
DISTRICT ONE**

MEMORANDUM

DATE: August 2, 2010 DTID: SL1008-001

TO: Jan Goldsmith, City Attorney

FROM: Councilmember Sherri S. Lightner

SUBJECT: "Reform Before Revenue" Ballot Measure

I am concerned that City Council is not getting timely information to thoroughly vet the proposed "Revenue Before Reform" ballot measure. The ballot measure deadline is rapidly approaching, and I am concerned that if the City Attorney's office is unable to present Council with an acceptable ballot measure on Wednesday, we will risk not being able to meet the August 6 deadline to place a measure on the ballot. Furthermore, Council needs an opportunity to consider and study the proposals well in advance of Wednesday's meeting.

In order to assist in my decision-making, I sought outside counsel who brought to my attention precedent for delegation of decision-making authority by a legislative body. In this case, *California Association of Retail Tobacconists et al. v The State of California* (Attachment 1), a sales tax ballot initiative was upheld by the court against several challenges including that it (1) violated the single subject rule and (2) unlawfully delegated legislative taxation and spending authority.

This precedent suggests that Council **does** have the authority to establish a provision whereby a specially constituted governmental (not private) commission or a city public officeholder makes an independent, but ministerial determination of whether or not certain reform measures have been completed, and that determination alone could be enough to trigger the operative date of the sales tax approved by voters, without additional Council action.

With this precedent in mind, I respectfully request that you prepare for Wednesday's Council meeting language for Council's consideration for a ballot measure with the following provisions:

1. Allows voters to approve imposing the tax and establishes when the tax ordinance becomes operative (presuming the voters approve it).
2. Gives City Council the authority to appoint an independent panel of commissioners ("The Reform Commission"). The Reform Commission is charged with the ministerial duty of determining that each of the various reform measures have been completed.
 - a. As Council passes each individual reform measure, Council will include in the measure language stating that the action meets one of the specific requirements of the "Reform Before Revenue" ballot measure.
 - b. Council will send a copy of that legislation to the Reform Commission.
 - c. After the Reform Commission has received notice from Council that all of the required reforms have been completed, then the Commission is required to issue a determination within 10 days and provide it to the City Clerk.
 - d. The City Clerk is then required to give official notice to the State Board of Equalization that the tax ordinance is now operative.
3. Establishes that the Reform Commission shall be composed of three individuals from specific stakeholder groups selected by the Mayor and approved by Council. For example, the Reform Commission could be comprised of a representative from each of the following stakeholder groups: (1) representative of a taxpayer advocacy organization; (2) representative of a labor organization; (3) at-large representative who is a citizen of the City of San Diego.
4. Establishes a date certain by which the Reform Commission shall have made its decision. I suggest April 1, 2011. This will ensure the Reform Commission does not prevent implementation of the sales tax (presuming the voters approve it) through delay.
5. Alternatively, Council can give the City Clerk the authority to serve as an individual in the same ministerial role as the Reform Commission. Instead of a Commission, the City Clerk would make the determination that the reforms have been met after notification by City Council as described in 2(a) and give notice to the State Board of Equalization.
6. To avoid an unlawful delegation of legislative power, we must ensure there is a very specific delineation of the findings that the Reform Commission or City Clerk must make.

I look forward to a productive discussion on these and other issues on Wednesday.

cc: Honorable Mayor
Honorable Councilmembers